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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/686,990

10/15/2003

Gary Johnson

APL.P0060

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02/05/2008

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LOS ANGELES, CA 90067

EXAMINER

THERIAULT, STEVEN B

ART UNIT

PAPER NUMBER

2179

MAIL DATE

DELIVERY MODE

02/05/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/686,990

Applicant(s)

JOHNSON, GARY

Examiner

Steven B. Theriault

Art Unit

2179

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 January 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-67.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


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SUPERVISORY PATENT EXAMINER

Continuation of 3. NOTE: The proposed amendment reflects a change in scope to claims 14-19, by rolling the claims up into claim 16. Claims 18-19 now require the limitations of claims 14-15 that were not previously considered and represents a change in scope. For example, previously the claim dependency was 14 as the independent with 15, 16, and 17 in the chain and 18 and 19 depended on claim 14. Now as it stands 14 and 15 roll into 16 and 17, 18 and 19 depend directly from 16. The new proposed combination is something new for the examiner to consider.

Continuation of 11. does NOT place the application in condition for allowance because: The applicant's request for reconsideration has been carefully reviewed and is not persuasive for the following reasons: The examiner refers to MPEP 2123 and 2144 that states that an entire reference cited is considered relevant to the rejection and not just the cited sections. In this case the applicant argues that Fayan does not teach a graph that is user selectable. In the previous rejection, page 4, middle, the examiner refers to Para 31-34, which relates to Figure 5. Fayan clearly teaches the user can interact with the graph displayed on the screen. The purpose of interaction is to adjust the speed graph that is applied to a retimed video clip. Fayan specifically states that controls have been provided to allow the user to select a keyframe. Fayan teaches the interface allows the user to select the anchor frame through direct user input to the graph and Fayan teaches the interface provides feedback as to the status of the effect applied to the clip (See Para 34). Therefore, contrary to applicants assertions Fayan shows a user interacting with the graph. Applicant further argues that there is no obvious reason to combine Fayana nd Kanda because they teach different methods of editing video. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Kanda shows a timeline video editor that is common in the art. Fayan suggests that there are various methods to show video editing other than a timeline but if a timeline is used as shown in Kanda, then Fayan suggests that the user interface would be available to an editor if the retiming effect were stipulated and the effect can be applied to the clip on the timeline. Which suggests to one of ordinary skill in the art that the structure of Kanda and Fayan can be combined because Fayan expressly suggests the combination (See Para 0029). In regard to the 101 rejection of claims 41-50, Applicant argues that a GUI is tied to a machine and is useful improvement of a machine and the claims refer to a display area and a selectable graph and thus the claim refers to a machine. The Examiner respectfully disagrees. The claims do not recite limitations to realize the claimed functions of the GUI. The claims refer to software per se. A GUI without the structural components to render the GUI is software and represents an abstract idea without a hardware component to realize the functions of the GUI. MPEP 2106.01 is specific regarding descriptive matter that fails to incorporate the medium to which the material is recorded is considered non-statutory subject matter. The Examiner cannot interpret or "read" in structural limitations from the specification and in this case the GUI has been defined to be capable of executing on a computer. However, the feature is not in the claims 41-50. Perhaps this issue can be resolved by simply stating in the claim that the GUI stored on a medium and executed on a processor performs a function. Regarding the amendment to claims 14-16, the rewriting of the claims into independent form changes the scope of the claims that depend from claim 16. Claim 15 now incorporates functional limitations that were not considered previously. While the limitations and the claims are identical and were rejected under 103(a) as being unpatentable over Kanda in view of Fayan in the previous rejection nonetheless the scope has changed and would be something new for the Examiner to consider.